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1900 MARKET STREET PHILADELPHIA, PA 19103-3508 215.665.2000 800.523.2900 215.665.2013 FAX www.cozen.com

MEMO ENDORSED

Sean P. Carter
Direct Phone 215.665.2105
Direct Fax 215.701.2105
scarter@cozen.com

August 4, 2006

The Honorable Richard C. Casey
United States District Court for the District
Of New York
United States Courthouse
500 Pearl Street, Room 1950
New York, NY 10007-1312

USDC SDNY
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In Re: Terrorist Attacks on September 11, 2001, 03 MDL 1570 (RCC)

Dear Judge Casey:

I write on behalf of the *Federal Insurance* plaintiffs, to request that the Court refer a discrete dispute between the *Federal Insurance* plaintiffs and defendant Jamal Barzinji to a federal magistrate judge for resolution.

On September 21, 2005, this Court denied Barzinji's Motion to Dismiss the claims asserted against him in the *Federal Insurance* action. Thereafter, the *Federal Insurance* plaintiffs served Barzinji with written discovery.

Shortly before his responses to plaintiffs' written discovery were due, Barzinji requested that the *Federal Insurance* plaintiffs agree to indefinitely stay all proceedings against him, citing three rationales. First, Barzinji argued that discovery should be held in abeyance pending decision on Barzinji's pending Motions to Dismiss other of the consolidated cases. Second, Barzinji suggested that discovery against him should not go forward until this Court resolves the Motions to Dismiss of other defendants who are alleged by plaintiffs to be part of the SAAR Network (a/k/a the "SAFA Group"). Finally, although no criminal indictment has been issued against Barzinji and his own counsel previously represented to this Court that the criminal investigation into the SAAR Network had "died with a whimper,"¹ Barzinji asserted that a stay of the civil proceedings against him was "appropriate given the ongoing criminal investigation of Dr. Barzinji alleged by Plaintiffs in the Complaint."

¹ See Transcript of October 14, 2004 Oral Argument at p. 44.

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For a variety of reasons, the *Federal Insurance* plaintiffs feel that the arguments defendant Barzinji has raised in favor of staying all proceedings against him are meritless², and therefore advised his counsel that they would not consent to an indefinite stay of proceedings against him. In response, defendant Barzinji advised that he intended to file a motion to stay all proceedings against him, and requested an extension of time in order to do so.

Given the discrete character of the dispute regarding the propriety of a stay, its direct impact upon the ongoing discovery process, and the number of motions already pending before the Court, the *Federal Insurance* plaintiffs requested that Barzinji consent to submit this dispute to the jurisdiction of a federal magistrate judge for resolution. In response, Barzinji advised that he would not consent to submit this dispute to a magistrate judge, reasoning that a motion for a stay is not a "discovery motion," and therefore not appropriate for submission to a magistrate judge.

Insofar as the proposed stay seeks to relieve defendant Barzinji of his obligation to respond to the discovery authorized against him, his suggestion that the proposed motion to stay is not a "discovery motion" is disingenuous. Regardless, consistent with 28 U.S.C. § 636, federal magistrate judges routinely address issues unrelated to discovery, and their broad involvement in complex litigation plays an important role in ensuring the efficient functioning of the federal judicial process. As the dispute between the plaintiffs and defendant Barzinji raises a discrete procedural matter, and this Court already faces a complex and ever growing docket in these consolidated MDL proceedings, the *Federal Insurance* plaintiffs respectfully submit that referral of this dispute to a magistrate judge is appropriate, and will promote judicial efficiency.³

The *Federal Insurance* plaintiffs thank the Court in advance for its consideration of this matter, and apologize that this procedural dispute could not be resolved amicably among the parties.

Respectfully,

COZEN O'CONNOR

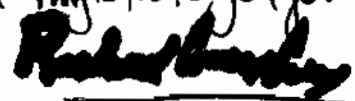


BY: SEAN P. CARTER

SPC/bdw

cc: All Counsel of Record (via email)

Application denied. The Court will not submit the forthcoming motion for a stay of all proceedings for resolution by a magistrate judge.
So ordered.



August 21, 2006

² The parties have agreed to a schedule for briefing the substantive arguments relating to the propriety of the proposed stay, and this application concerns only whether those briefs will be referred to a magistrate judge for resolution.

³ The *Federal Insurance* Plaintiffs respectfully note that this Court has recognized the appropriateness of referring discrete disputes arising out of this litigation to a magistrate judge. See MDL Docket # 1774, dated 04/18/06 (referring *Ashton-National Commercial Bank* dispute to Judge Frank Maas).